

Chapter 363-11 WAC

PRACTICE AND PROCEDURE—BOARD OF PILOTAGE COMMISSIONERS

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WAC 363-11-001 General rule and information. The chairperson of the board of pilotage commissioners is the secretary of transportation of the state of Washington or the secretary's designee. Information regarding the Pilotage Act, complaints and other matters coming under the provisions of the Pilotage Act and the board's rules and regulations may be obtained by contacting the chairperson or the board's secretary in person or in writing at the Office of the Board of Pilotage Commissioners, Pier 52, Seattle, Washington 98104. All public documents in the custody of the board may be obtained upon request made to the chairperson of the Board of Pilotage Commissioners, Pier 52, Seattle, Washington 98104.

Any matter filed with the chairperson and/or the secretary will be brought to the attention of the board at its next regular meeting, the date of which is the second Thursday of each month. Persons desiring to do so may also attend the board meetings, which are held at Pier 52, Seattle, Washington.

The purpose and scope of activity of the board of pilotage commissioners are set out in chapter 88.16 RCW and are as follows:

- Scope: (1) Puget Sound pilotage district.
- (2) Grays Harbor pilotage district.

Purpose: The purpose of the board of pilotage commissioners is to prevent the loss of human lives, loss of property and vessels and to protect the marine environment by maintenance of a competent and efficient pilotage service on the state's waters. To accomplish this end the board examines proficiency of potential pilots, licenses pilots, regulates pilots, enforces the use of pilots, sets pilotage rates, receives and investigates reports of accidents involving pilots, keeps

records of various matters affecting pilotage and fulfills other responsibilities enumerated in chapter 88.16 RCW.

[Recodified as § 363-11-001. 97-08-042, filed 3/28/97, effective 3/28/97. Statutory Authority: RCW 88.16.035. 80-03-081 (Order 79-6, Resolution No. 79-6), § 296-11-001, filed 3/4/80. Statutory Authority: RCW 88.16.035 and 88.16.155. 78-09-057 (Order 78-2, Resolution No. 78-2), § 296-11-001, filed 8/23/78; Order 2-68, § 296-11-001, filed 11/1/68.]

WAC 363-11-003 Index to documents. The board of pilotage commissioners finds that the preparation and maintenance of an index to documents as required by RCW 42.17.260 would be unduly burdensome. Therefore, such an index will not be maintained. This undue burden is caused by the fact that the board of pilotage commissioners is a small agency of the state of Washington operating with a limited amount of financial resources. Because of the agency's size, its records are organized in an effective and straightforward manner which renders them accessible to the general public without resort to an index as envisioned in RCW 42.17.260. All indexes which are maintained for agency use will be available for public inspection.

[Recodified as § 363-11-003. 97-08-042, filed 3/28/97, effective 3/28/97. Statutory Authority: RCW 88.16.035 and 88.16.155. 78-09-057 (Order 78-2, Resolution No. 78-2), § 296-11-003, filed 8/23/78.]

WAC 363-11-010 Appearance and practice before agency—Who may appear. No person may appear in a representative capacity before the board of pilotage commissioners or its designated hearing officer other than the following:

- (1) Attorneys at law duly qualified and entitled to practice before the supreme court of the state of Washington.
- (2) Attorneys at law duly qualified and entitled to practice before the highest court of record of any other state, if the attorneys at law of the state of Washington are permitted to appear in a representative capacity before administrative agencies of such other state, and if not otherwise prohibited by our state law.

(3) Persons otherwise qualified as possessing the requisite skill to appear and expertly represent others who have applied to the board of pilotage commissioners and have been duly authorized by the board to appear in a representative capacity before the board.

(4) A bona fide officer, partner, or full time employee of an individual firm, association, partnership, or corporation who appears for such individual firm, association, partnership, or corporation.

[Recodified as § 363-11-010. 97-08-042, filed 3/28/97, effective 3/28/97; Rule .08.010, effective 3/1/60, filed 3/23/60.]

WAC 363-11-020 Appearance and practice before agency—Appearance in certain proceedings may be limited to attorneys. In all hearings involving the taking of testimony and the formulation of a record subject to review by the courts, where the board of pilotage commissioners or its designated hearing officer determines that representative activity in such hearing requires a high degree of legal training, experience, and skill, the board or its designated hearing officer may limit those who may appear in a representative capacity to attorneys at law.

[Recodified as § 363-11-020. 97-08-042, filed 3/28/97, effective 3/28/97; Rule .08.020, effective 3/1/60, filed 3/23/60.]

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WAC 363-11-030 Appearance and practice before agency—Solicitation of business unethical. It shall be unethical for persons acting in a representative capacity before the board of pilotage commissioners to solicit business by circulars, advertisements or by personal communication or interviews not warranted by personal relations, provided that such representatives may publish or circulate business cards. It is equally unethical to procure business indirectly by solicitors of any kind.

[Recodified as § 363-11-030. 97-08-042, filed 3/28/97, effective 3/28/97; Rule .08.030, effective 3/1/60, filed 3/23/60.]

WAC 363-11-040 Appearance and practice before agency—Standards of ethical conduct. All persons appearing in proceedings before the board of pilotage commissioners in a representative capacity shall conform to the standards of ethical conduct required of attorneys before the courts of Washington. If any such person does not conform to such standards, the board may decline to permit such person to appear in a representative capacity in any proceeding before the board.

[Recodified as § 363-11-040. 97-08-042, filed 3/28/97, effective 3/28/97; Rule .08.040, effective 3/1/60, filed 3/23/60.]

WAC 363-11-050 Appearance and practice before agency—Appearance by former employee of board or member of attorney general's staff. No former employee of the board of pilotage commissioners or member of the attorney general's staff may at any time after severing his employment with the board or the attorney general appear, except with the written permission of the board, and in compliance with chapter 42.22 RCW, in a representative capacity on behalf of other parties in a formal proceeding wherein he previously took an active part as a representative of the board.

[Recodified as § 363-11-050. 97-08-042, filed 3/28/97, effective 3/28/97; Rule .08.050, effective 3/1/60, filed 3/23/60.]

WAC 363-11-060 Appearance and practice before agency—Former employee as expert witness. No former employee of the board of pilotage commissioners shall at any time after severing his employment with the board appear, except with the written permission of the board, and in compliance with chapter 42.22 RCW, as an expert witness on behalf of other parties in a formal proceeding wherein he previously took an active part in the investigation as a representative of the board.

[Recodified as § 363-11-060. 97-08-042, filed 3/28/97, effective 3/28/97; Rule .08.060, effective 3/1/60, filed 3/23/60.]

WAC 363-11-070 Computation of time. In computing any period of time prescribed or allowed by the board of pilotage commissioners' rules, by order of the board or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor a holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation.

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[Recodified as § 363-11-070. 97-08-042, filed 3/28/97, effective 3/28/97; Rule .08.070, effective 3/1/60, filed 3/23/60.]

WAC 363-11-080 Notice and opportunity for hearing in contested cases. In any contested case, all parties shall be served with a notice at least twenty days before the date set for the hearing. The notice shall state the time, place and issues involved, as required by RCW 34.04.090(1).

[Recodified as § 363-11-080. 97-08-042, filed 3/28/97, effective 3/28/97; Order 2-68, § 296-11-080, filed 11/1/68; Rule .08.080, effective 3/1/60, filed 3/23/60.]

WAC 363-11-090 Service of process—By whom served. The board of pilotage commissioners shall cause to be served all orders, notices and other papers issued by it, together with any other papers which it is required by law to serve. Every other paper shall be served by the party filing it.

[Recodified as § 363-11-090. 97-08-042, filed 3/28/97, effective 3/28/97; Rule .08.090, effective 3/1/60, filed 3/23/60.]

WAC 363-11-100 Service of process—Upon whom served. All papers served by either the board of pilotage commissioners or any party shall be served upon all counsel of record at the time of such filing and upon parties not represented by counsel or upon their agents designated by them or by law. Any counsel entering an appearance subsequent to the initiation of the proceeding shall notify all other counsel then of record and all parties not represented by counsel of such fact.

[Recodified as § 363-11-100. 97-08-042, filed 3/28/97, effective 3/28/97; Rule .08.100, effective 3/1/60, filed 3/23/60.]

WAC 363-11-110 Service of process—Service upon parties. The final order, and any other paper required to be served by the agency upon a party, shall be served upon such party or upon the agent designated by him or by law to receive service of such papers, and a copy shall be furnished to counsel of record.

[Recodified as § 363-11-110. 97-08-042, filed 3/28/97, effective 3/28/97; Rule .08.110, effective 3/1/60, filed 3/23/60.]

WAC 363-11-120 Service of process—Method of service. Service of papers shall be made personally or, unless otherwise provided by law, by first-class, registered, or certified mail; or by telegraph.

[Recodified as § 363-11-120. 97-08-042, filed 3/28/97, effective 3/28/97; Rule .08.120, effective 3/1/60, filed 3/23/60.]

WAC 363-11-130 Service of process—When service complete. Service upon parties shall be regarded as complete: By mail, upon deposit in the United States mail properly stamped and addressed; by telegraph, when deposited with a telegraph company properly addressed and with charges prepaid.

[Recodified as § 363-11-130. 97-08-042, filed 3/28/97, effective 3/28/97; Rule .08.130, effective 3/1/60, filed 3/23/60.]

WAC 363-11-140 Service of process—Filing with agency. Papers required to be filed with the board of pilotage commissioners shall be deemed filed upon actual receipt by

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the board at the place specified in its rules accompanied by proof of service upon parties required to be served.

[Recodified as § 363-11-140. 97-08-042, filed 3/28/97, effective 3/28/97; Rule .08.140, effective 3/1/60, filed 3/23/60.]

WAC 363-11-150 Subpoenas—Where provided by law—Form. Every subpoena shall state the name of the state of Washington board of pilotage commissioners and the title of the proceeding, if any, and shall command the person to whom it is directed to attend and give testimony or produce designated books, documents or things under his control at a specified time and place.

[Recodified as § 363-11-150. 97-08-042, filed 3/28/97, effective 3/28/97; Rule .08.150, effective 3/1/60, filed 3/23/60.]

WAC 363-11-160 Subpoenas—Issuance to parties. Upon application of counsel or other representative authorized to practice before the agency for any party to a contested case, there shall be issued to such party subpoenas requiring the attendance and testimony of witnesses or the production of evidence in such proceeding. The board of pilotage commissioners may issue subpoenas to parties not so represented upon request or upon a showing of general relevance and reasonable scope of the testimony or evidence sought.

[Recodified as § 363-11-160. 97-08-042, filed 3/28/97, effective 3/28/97; Rule .08.160, effective 3/1/60, filed 3/23/60.]

WAC 363-11-170 Subpoenas—Service. Unless the service of a subpoena is acknowledged on its face by the person subpoenaed, service shall be made by delivering a copy of the subpoena to such person and by tendering him on demand, if entitled to make such demand, the fees for one day's attendance and the mileage allowed by law.

[Recodified as § 363-11-170. 97-08-042, filed 3/28/97, effective 3/28/97; Rule .08.170, effective 3/1/60, filed 3/23/60.]

WAC 363-11-180 Subpoenas—Fees. Witnesses summoned before the board of pilotage commissioners shall be paid by the party at whose instance they appear the same fees and mileage that are paid to witnesses in the superior courts of the state of Washington.

[Recodified as § 363-11-180. 97-08-042, filed 3/28/97, effective 3/28/97; Rule .08.180, effective 3/1/60, filed 3/23/60.]

WAC 363-11-190 Subpoenas—Proof of service. The person serving the subpoena shall make proof of service by filing the subpoena and the required return, affidavit, or acknowledgment of service with the board of pilotage commissioners or the officer before whom the witness is required to testify or produce evidence. If service is made by a person other than an officer of the board, and such service has not been acknowledged by the witness, such person shall make an affidavit of service. Failure to make proof of service does not affect the validity of the service.

[Recodified as § 363-11-190. 97-08-042, filed 3/28/97, effective 3/28/97; Rule .08.190, effective 3/1/60, filed 3/23/60.]

WAC 363-11-200 Subpoenas—Quashing. Upon motion made promptly, and in any event at or before the time

specified in the subpoena for compliance, by the person to whom the subpoena is directed (and upon notice to the party to whom the subpoena was issued) the board of pilotage commissioners or its authorized member or officer may (1) quash or modify the subpoena if it is unreasonable or requires evidence not relevant to any matter in issue, or (2) condition denial of the motion upon just and reasonable conditions.

[Recodified as § 363-116-200. 97-08-042, filed 3/28/97, effective 3/28/97; Rule .08.200, effective 3/1/60, filed 3/23/60.]

WAC 363-11-210 Subpoenas—Enforcement. Upon application and for good cause shown, the board of pilotage commissioners will seek judicial enforcement of subpoenas issued to parties and which have not been quashed.

[Recodified as § 363-11-210. 97-08-042, filed 3/28/97, effective 3/28/97; Rule .08.210, effective 3/1/60, filed 3/23/60.]

WAC 363-11-220 Subpoenas—Geographical scope. Such attendance of witnesses and such production of evidence may be required from any place in the state of Washington, at any designated place of hearing.

[Recodified as § 363-116-220. 97-08-042, filed 3/28/97, effective 3/28/97; Rule .08.220, effective 3/1/60, filed 3/23/60.]

WAC 363-11-230 Depositions and interrogatories in contested cases—Right to take. Except as may be otherwise provided, any party may take the testimony of any person, including a party, by deposition upon oral examination or written interrogatories for use as evidence in the proceeding, except that leave must be obtained if notice of the taking is served by a proponent within twenty days after the filing of a complaint. The attendance of witnesses may be compelled by the use of a subpoena. Depositions shall be taken only in accordance with this rule and the rule of subpoenas.

[Recodified as § 363-11-230. 97-08-042, filed 3/28/97, effective 3/28/97; Rule .08.230, effective 3/1/60, filed 3/23/60.]

WAC 363-11-240 Depositions and interrogatories in contested cases—Scope. Unless otherwise ordered, the deponent may be examined regarding any matter not privileged, which is relevant to the subject matter involved in the proceeding.

[Recodified as § 363-11-240. 97-08-042, filed 3/28/97, effective 3/28/97; Rule .08.240, effective 3/1/60, filed 3/23/60.]

WAC 363-11-250 Depositions and interrogatories in contested cases—Officer before whom taken. Within the United States or within a territory or insular possession subject to the dominion of the United States depositions shall be taken before an officer authorized to administer oaths by the laws of the state of Washington or of the place where the examination is held; within a foreign country, depositions shall be taken before a secretary of an embassy or legation, consul general, vice consul or consular agent of the United States, or a person designated by the board of pilotage commissioners or agreed upon by the parties by stipulation in writing filed with the board. Except by stipulation, no deposition shall be taken before a person who is a party or the privy of a party, or a privy of any counsel of a party, or who is financially interested in the proceeding.

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[Recodified as § 363-11-250. 97-08-042, filed 3/28/97, effective 3/28/97; Rule .08.250, effective 3/1/60, filed 3/23/60.]

WAC 363-11-260 Depositions and interrogatories in contested cases—Authorization. A party desiring to take the deposition of any person upon oral examination shall give reasonable notice of not less than three days in writing to the board of pilotage commissioners and all parties. The notice shall state the time and place for taking the deposition, the name and address of each person to be examined, if known, and if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. On motion of a party upon whom the notice is served, the hearing officer may for cause shown, enlarge or shorten the time. If the parties so stipulate in writing, depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used as other depositions.

[Recodified as § 363-11-260. 97-08-042, filed 3/28/97, effective 3/28/97; Rule .08.260, effective 3/1/60, filed 3/23/60.]

WAC 363-11-270 Depositions and interrogatories in contested cases—Protection of parties and deponents. After notice is served for taking a deposition, upon its own motion or upon motion reasonably made by any party or by the person to be examined and upon notice and for good cause shown the board of pilotage commissioners or its designated hearing officer may make an order that the deposition shall not be taken, or that it may be taken only at some designated place other than that stated in the notice, or that it may be taken only on written interrogatories, or that certain matters shall not be inquired into, or that the scope of the examination shall be limited to certain matters, or that the examination shall be limited to certain matters, or that the examination shall be held with no one present except the parties to the action and their officers or counsel, or that after being sealed, the deposition shall be opened only by order of the board, or that business secrets or secret processes, developments, or research need not be disclosed, or that the parties shall simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the board, or that the board may make any other order which justice requires to protect the party or witness from annoyance, embarrassment, or oppression. At any time during the taking of the deposition, on motion of any party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the board or its designated hearing officer may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as above provided. If the order made terminates the examination, it shall be resumed thereafter only upon the order of the agency. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order.

[Recodified as § 363-11-270. 97-08-042, filed 3/28/97, effective 3/28/97; Rule .08.270, effective 3/1/60, filed 3/23/60.]

WAC 363-11-280 Depositions and interrogatories in contested cases—Oral examination and cross-examina-

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tion. Examination and cross-examination shall proceed as at an oral hearing. In lieu of participating in the oral examination, any party served with notice of taking a deposition may transmit written cross interrogatories to the officer who, without first disclosing them to any person, and after the direct testimony is complete, shall propound them seriatim to the deponent and record or cause the answers to be recorded verbatim.

[Recodified as § 363-11-280. 97-08-042, filed 3/28/97, effective 3/28/97; Rule .08.280, effective 3/1/60, filed 3/23/60.]

WAC 363-11-290 Depositions and interrogatories in contested cases—Recordation. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally or by someone acting under his direction and in his presence, record the testimony by typewriter directly or by transcription from stenographic notes, wire or record recorders, which record shall separately and consecutively number each interrogatory. Objections to the notice, qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented or to the conduct of the officer, or of any party, shall be noted by the officer upon the deposition. All objections by any party not so made are waived.

[Recodified as § 363-11-290. 97-08-042, filed 3/28/97, effective 3/28/97; Rule .08.290, effective 3/1/60, filed 3/23/60.]

WAC 363-11-300 Depositions and interrogatories in contested cases—Signing attestation and return. When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reasons, if any, given therefore; and the deposition may then be used as fully as though signed, unless on a motion to suppress the board of pilotage commissioners holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. He shall then securely seal the deposition in an envelope indorsed with the title of proceeding and marked "Deposition of (here insert name of witness)" and shall promptly send it by registered or certified mail to the board of pilotage commissioners, or its designated hearing officer, for filing. The party taking the deposition shall give prompt notice of its filing to all other parties. Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent.

[Recodified as § 363-11-300. 97-08-042, filed 3/28/97, effective 3/28/97; Rule .08.300, effective 3/1/60, filed 3/23/60.]

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WAC 363-11-310 Depositions and interrogatories in contested cases—Use and effect. Subject to rulings by the hearing officer upon objections a deposition taken and filed as provided in this rule will not become a part of the record in the proceeding until received in evidence by the hearing officer upon his own motion or the motion of any party. Except by agreement of the parties or ruling of the hearing officer, a deposition will be received only in its entirety. A party does not make a party, or the privy of a party, or any hostile witness his witness by taking his deposition. Any party may rebut any relevant evidence contained in a deposition whether introduced by him or any other party.

[Recodified as § 363-11-310. 97-08-042, filed 3/28/97, effective 3/28/97; Rule .08.310, effective 3/1/60, filed 3/23/60.]

WAC 363-11-320 Depositions and interrogatories in contested cases—Fees of officers and deponents. Deponents whose depositions are taken and the officers taking the same shall be entitled to the same fees as are paid for like services in the superior courts of the state of Washington which fees shall be paid by the party at whose instance the depositions are taken.

[Recodified as § 363-11-320. 97-08-042, filed 3/28/97, effective 3/28/97; Rule .08.320, effective 3/1/60, filed 3/23/60.]

WAC 363-11-330 Depositions upon interrogatories—Submission of interrogatories. Where the deposition is taken upon written interrogatories, the party offering the testimony shall separately and consecutively number each interrogatory and file and serve them with a notice stating the name and address of the person who is to answer them and the name or descriptive title and address of the officer before whom they are to be taken. Within ten days thereafter a party so served may serve cross-interrogatories upon the party proposing to take the deposition. Within five days thereafter, the latter may serve redirect interrogatories upon the party who served cross-interrogatories.

[Recodified as § 363-11-330. 97-08-042, filed 3/28/97, effective 3/28/97; Rule .08.330, effective 3/1/60, filed 3/23/60.]

WAC 363-11-340 Depositions upon interrogatories—Interrogation. Where the interrogatories are forwarded to an officer authorized to administer oaths as provided in WAC 296-11-250 the officer taking the same after duly swearing the deponent, shall read to him seriatim, one interrogatory at a time and cause the same and the answer thereto to be recorded before the succeeding interrogatory is asked. No one except the deponent, the officer and the court reporter or stenographer recording and transcribing it shall be present during the interrogation.

[Recodified as § 363-11-340. 97-08-042, filed 3/28/97, effective 3/28/97; Rule .08.340, effective 3/1/60, filed 3/23/60.]

WAC 363-11-350 Depositions upon interrogatories—Attestation and return. The officer before whom interrogatories are verified or answered shall (1) certify under his official signature and seal that the deponent was duly sworn by him, that the interrogatories and answers are a true record of the deponent's testimony, that no one except deponent, the officer and the stenographer were present during the taking, and that neither he nor the stenographer, to his knowl-

edge is a party, privy to a party, or interested in the event of the proceedings, and (2) promptly send by registered or certified mail the original copy of the deposition and exhibits with his attestation to the board of pilotage commissioners, or its designated hearing officer, one copy to the counsel who submitted the interrogatories and another copy to the deponent.

[Recodified as § 363-11-350. 97-08-042, filed 3/28/97, effective 3/28/97; Rule .08.350, effective 3/1/60, filed 3/23/60.]

WAC 363-11-360 Depositions upon interrogatories—Provisions of deposition rule. In all other respects, depositions upon interrogatories shall be governed by the previous deposition rule.

[Recodified as § 363-11-360. 97-08-042, filed 3/28/97, effective 3/28/97; Rule .08.360, effective 3/1/60, filed 3/23/60.]

WAC 363-11-370 Official notice—Matters of law. The board of pilotage commissioners or its hearing officer, upon request made before or during a hearing, will officially notice:

(1) **Federal law.** The Constitution; congressional acts, resolutions, records, journals and committee reports; decisions of federal courts and administrative agencies; executive orders and proclamations; and all rules, orders and notices published in the Federal Register;

(2) **State law.** The Constitution of the state of Washington, acts of the legislature, resolutions, records, journals and committee reports; decisions of administrative agencies of the state of Washington, executive orders and proclamations by the governor; and all rules, orders and notices filed with the code reviser.

(3) **Governmental organization.** Organization, territorial limitations, officers, departments, and general administration of the government of the state of Washington, the United States, the several states and foreign nations;

(4) **Agency organization.** The board of pilotage commissioners' organization, administration, officers, personnel, official publications, and practitioners before its bar.

[Recodified as § 363-11-370. 97-08-042, filed 3/28/97, effective 3/28/97; Rule .08.370, effective 3/1/60, filed 3/23/60.]

WAC 363-11-380 Official notice—Material facts. In the absence of controverting evidence, the board of pilotage commissioners and its hearing officers, upon request made before or during a hearing, may officially notice:

(1) **Agency proceedings.** The pendency of, the issues and position of the parties therein, and the disposition of any proceeding then pending before or theretofore concluded by the board of pilotage commissioners;

(2) **Business customs.** General customs and practices followed in the transaction of business;

(3) **Notorious facts.** Facts so generally and widely known to all well-informed persons as not to be subject to reasonable dispute, or specific facts which are capable of immediate and accurate demonstration by resort to accessible sources of generally accepted authority, including but not exclusively, facts stated in any publication authorized or permitted by law to be made by any federal or state officer, department, or agency;

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(4) **Technical knowledge.** Matters within the technical knowledge of the board of pilotage commissioners as a body of experts, within the scope or pertaining to the subject matter of its statutory duties, responsibilities or jurisdiction;

(5) **Request or suggestion.** Any party may request, or the hearing officer or the board of pilotage commissioners may suggest, that official notice be taken of a material fact, which shall be clearly and precisely stated, orally on the record, at any prehearing conference or oral hearing or argument, or may make such request or suggestion by written notice, any pleading, motion, memorandum, or brief served upon all parties, at any time prior to a final decision;

(6) **Statement.** Where an initial or final decision of the board of pilotage commissioners rests in whole or in part upon official notice of a material fact, such fact shall be clearly and precisely stated in such decision. In determining whether to take official notice of material facts, the hearing officer of the board may consult any source of pertinent information, whether or not furnished as it may be, by any party and whether or not admissible under the rules of evidence;

(7) **Controversion.** Any party may controvert a request or a suggestion that official notice of a material fact be taken at the time the same is made if it be made orally, or by a pleading, reply or brief in response to the pleading or brief or notice in which the same is made or suggested. If any decision is stated to rest in whole or in part upon official notice of a material fact which the parties have not had a prior opportunity to controvert, any party may controvert such fact by appropriate exceptions if such notice be taken in an initial or intermediate decision or by a petition for reconsideration if notice of such fact be taken in a final report. Such controversion shall concisely and clearly set forth the sources, authority and other data relied upon to show the existence or nonexistence of the material fact assumed or denied in the decision;

(8) **Evaluation of evidence.** Nothing herein shall be construed to preclude the board of pilotage commissioners or its authorized agents from utilizing their experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to them.

[Recodified as § 363-11-380. 97-08-042, filed 3/28/97, effective 3/28/97; Rule .08.380, effective 3/1/60, filed 3/23/60.]

WAC 363-11-390 Presumptions. Upon proof of the predicate facts specified in the following six subsections hereof without substantial dispute and by direct, clear, and convincing evidence, the board of pilotage commissioners, with or without prior request or notice, may make the following presumptions, where consistent with all surrounding facts and circumstances:

(1) **Continuity.** That a fact of a continuous nature, proved to exist at a particular time, continues to exist as of the date of the presumption, if the fact is one which usually exists for at least that period of time;

(2) **Identity.** That persons and objects of the same name and description are identical;

(3) **Delivery.** Except in a proceeding where the liability of the carrier for nondelivery is involved, that mail matter, communications, express or freight, properly addressed, marked, billed and delivered respectively to the post office, telegraph, cable or radio company, or authorized common carrier of property with all postage, tolls and charges properly

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prepaid, is or has been delivered to the addressee or consignee in the ordinary course of business;

(4) **Ordinary course.** That a fact exists or does not exist, upon proof of the existence or nonexistence of another fact which in the ordinary and usual course of affairs, usually and regularly co-exists with the fact presumed;

(5) **Acceptance of benefit.** That a person for whom an act is done or to whom a transfer is made has, does or will accept same where it is clearly in his own self-interest so to do;

(6) **Interference with remedy.** That evidence, with respect to a material fact which in bad faith is destroyed, eloiigned, suppressed or withheld by a party in control thereof, would if produced, corroborate the evidence of the adversary party with respect to such fact.

[Recodified as § 363-11-390. 97-08-042, filed 3/28/97, effective 3/28/97; Rule .08.390, effective 3/1/60, filed 3/23/60.]

WAC 363-11-400 Stipulations and admissions of record. The existence or nonexistence of a material fact, as made or agreed in a stipulation or in an admission of record, will be conclusively presumed against any party bound thereby, and no other evidence with respect thereto will be received upon behalf of such party, provided:

(1) **Upon whom binding.** Such a stipulation or admission is binding upon the parties by whom it is made, their privies and upon all other parties to the proceeding who do not expressly and unequivocally deny the existence or nonexistence of the material fact so admitted or stipulated, upon the making thereof, if made on the record at a pre-hearing conference, oral hearing, oral argument or by a writing filed and served upon all parties within five days after a copy of such stipulation or admission has been served upon them;

(2) **Withdrawal.** Any party bound by a stipulation or admission of record at any time prior to final decision may be permitted to withdraw the same in whole or in part by showing to the satisfaction of the hearing officer or the board of pilotage commissioners that such stipulation or admission was made inadvertently or under a bona fide mistake of fact contrary to the true fact and that its withdrawal at the time proposed will not unjustly prejudice the rights of other parties to the proceeding.

[Recodified as § 363-11-400. 97-08-042, filed 3/28/97, effective 3/28/97; Rule .08.400, effective 3/1/60, filed 3/23/60.]

WAC 363-11-410 Form and content of decisions in contested cases. Every decision and order, whether proposed, initial, or final, shall:

(1) Be correctly captioned as to name of agency and name of proceeding;

(2) Designate all parties and counsel to the proceeding;

(3) Include a concise statement of the nature and background of the proceeding;

(4) Be accompanied by appropriate numbered findings of fact and conclusions of law;

(5) Whenever practical, include the reason or reasons for the particular order or remedy afforded;

(6) Wherever practical, be referenced to specific provisions of the law and/or regulations appropriate thereto, together with reasons and precedents relied upon to support the same.

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[Recodified as § 363-11-410. 97-08-042, filed 3/28/97, effective 3/28/97; Rule .08.410, effective 3/1/60, filed 3/23/60.]

WAC 363-11-420 Definition of issues before hearing.

In all proceedings the issues to be adjudicated shall be made initially as precise as possible, in order that hearing officers may proceed promptly to conduct the hearings on relevant and material matter only.

[Recodified as § 363-11-420. 97-08-042, filed 3/28/97, effective 3/28/97; Rule .08.420, effective 3/1/60, filed 3/23/60.]

WAC 363-11-430 Prehearing conference rule—

Authorized. In any proceeding the board of pilotage commissioners or its designated hearing officer upon its or his own motion, or upon the motion of one of the parties or their qualified representatives, may in its or his discretion direct the parties or their qualified representatives to appear at a specified time and place for a conference to consider

(1) The simplification of the issues;

(2) The necessity of amendments to the pleadings;

(3) The possibility of obtaining stipulations, admissions of facts and of documents;

(4) The limitation of the number of expert witnesses;

(5) Such other matters as may aid in the disposition of the proceeding.

[Recodified as § 363-11-430. 97-08-042, filed 3/28/97, effective 3/28/97; Rule .08.430, effective 3/1/60, filed 3/23/60.]

WAC 363-11-440 Prehearing conference rule—

Record of conference action. The board of pilotage commissioners or its designated hearing officer shall make an order or statement which recites the action taken at the conference, the amendments allowed to the pleadings and the agreements made by the parties or their qualified representatives as to any of the matters considered, including the settlement or simplification of issues, and which limits the issues for hearing to those not disposed of by admissions or agreements; and such order or statement shall control the subsequent course of the proceeding unless modified for good cause by subsequent order.

[Recodified as § 363-11-440. 97-08-042, filed 3/28/97, effective 3/28/97; Rule .08.440, effective 3/1/60, filed 3/23/60.]

WAC 363-11-450 Submission of documentary evidence in advance. Where practicable the board of pilotage commissioners or its designated hearing officer may require:

(1) That all documentary evidence which is to be offered during the taking of evidence be submitted to the hearing examiner and to the other parties to the proceeding sufficiently in advance of such taking of evidence to permit study and preparation of cross-examination and rebuttal evidence;

(2) That documentary evidence not submitted in advance, as may be required by subsection (1), be not received in evidence in the absence of a clear showing that the offering party had good cause for his failure to produce the evidence sooner;

(3) That the authenticity of all documents submitted in advance in a proceeding in which such submission is required, be deemed admitted unless written objection thereto is filed prior to the hearing, except that a party will be permitted to challenge such authenticity at a later time upon a

clear showing of good cause for failure to have filed such written objection.

[Recodified as § 363-11-450. 97-08-042, filed 3/28/97, effective 3/28/97; Rule .08.450, effective 3/1/60, filed 3/23/60.]

WAC 363-11-460 Excerpts from documentary evidence. When portions only of a document are to be relied upon, the offering party shall prepare the pertinent excerpts, adequately identified, and shall supply copies of such excerpts, together with a statement indicating the purpose for which such materials will be offered, to the hearing examiner and to the other parties. Only the excerpts, so prepared and submitted, shall be received in the record. However, the whole of the original document shall be made available for examination and for use by all parties to the proceeding.

[Recodified as § 363-11-460. 97-08-042, filed 3/28/97, effective 3/28/97; Rule .08.460, effective 3/1/60, filed 3/23/60.]

WAC 363-11-470 Expert or opinion testimony and testimony based on economic or statistical data—Number and qualifications of witnesses. That the hearing examiner or other appropriate officer in all classes of cases where practicable make an effort to have the interested parties agree upon the witness or witnesses who are to give expert or opinion testimony, either by selecting one or more to speak for all parties or by limiting the number for each party; and, if the interested parties cannot agree, require them to submit to him and to the other parties written statements containing the names, addresses and qualifications of their respective opinion or expert witnesses, by a date determined by him and fixed sufficiently in advance of the hearing to permit the other interested parties to investigate such qualifications.

[Recodified as § 363-11-470. 97-08-042, filed 3/28/97, effective 3/28/97; Rule .08.470, effective 3/1/60, filed 3/23/60.]

WAC 363-11-480 Expert or opinion testimony and testimony based on economic or statistical data—Written sworn statements. That the hearing examiner or other appropriate officer, in all classes of cases in which it is practicable and permissible, require, and when not so permissible, make every effort to bring about by voluntary submission, that all direct opinion or expert testimony and all direct testimony based on economic or statistical data be reduced to written sworn statements, and, together with the exhibits upon which based, be submitted to him and to the other parties to the proceeding by a date determined by the hearing officer and fixed a reasonable time in advance of the hearing; and that such sworn statements be acceptable as evidence upon formal offer at the hearing, subject to objection on any ground except that such sworn statements shall not be subject to challenge because the testimony is not presented orally, and provided that witnesses making such statements shall not be subject to cross-examination unless a request is made sufficiently in advance of the hearing to insure the presence of the witnesses.

[Recodified as § 363-11-480. 97-08-042, filed 3/28/97, effective 3/28/97; Rule .08.480, effective 3/1/60, filed 3/23/60.]

WAC 363-11-490 Expert or opinion testimony and testimony based on economic or statistical data—Sup-

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porting data. That the hearing examiner or other appropriate officer, in his discretion but consistent with the rights of the parties, cause the parties to make available for inspection in advance of the hearing, and for purposes of cross-examination at the hearing, the data underlying statements and exhibits submitted in accordance with WAC 296-11-480, but, wherever practicable that he restrict to a minimum the placing of such data in the record.

[Recodified as § 363-11-490. 97-08-042, filed 3/28/97, effective 3/28/97; Rule .08.490, effective 3/1/60, filed 3/23/60.]

WAC 363-11-500 Expert or opinion testimony and testimony based on economic or statistical data—Effect of noncompliance with WAC 363-11-470 or 363-11-480. Whenever the manner of introduction of opinion or expert testimony or testimony based on economic or statistical data is governed by requirements fixed under the provisions of WAC 296-11-470 or 296-11-480, such testimony not submitted in accordance with the relevant requirements shall not be received in evidence in the absence of a clear showing that the offering party had good cause for his failure to conform to such requirements.

[Recodified as § 363-11-500. 97-08-042, filed 3/28/97, effective 3/28/97; Rule .08.500, effective 3/1/60, filed 3/23/60.]

WAC 363-11-510 Continuances. Any party who desires a continuance shall, immediately upon receipt of notice of a hearing, or as soon thereafter as facts requiring such continuance come to his knowledge, notify the board of pilotage commissioners or its designated hearing officer of said desire, stating in detail the reasons why such continuance is necessary. The board or its designated hearing officer, in passing upon a request for continuance, shall consider whether such request was promptly and timely made. For good cause shown, the board or its designated hearing officer may grant such a continuance and may at any time order a continuance upon its or his own motion. During a hearing, if it appears in the public interest or in the interest of justice that further testimony or argument should be received, the examiner or other officer conducting the hearing may in his discretion continue the hearing and fix the date for introduction of additional evidence or presentation of argument. Such oral notice shall constitute final notice of such continued hearing.

[Recodified as § 363-11-510. 97-08-042, filed 3/28/97, effective 3/28/97; Rule .08.510, effective 3/1/60, filed 3/23/60.]

WAC 363-11-520 Rules of evidence—Admissibility criteria. Subject to the other provisions of these rules, all relevant evidence is admissible which, in the opinion of the officer conducting the hearing, is the best evidence reasonably obtainable, having due regard for its necessity, availability and trustworthiness. In passing upon the admissibility of evidence, the officer conducting the hearing shall give consideration to, but shall not be bound to follow, the rules of evidence governing civil proceedings, in matters not involving trial by jury, in the superior court of the state of Washington.

[Recodified as § 363-11-520. 97-08-042, filed 3/28/97, effective 3/28/97; Rule .08.520, effective 3/1/60, filed 3/23/60.]

WAC 363-11-530 Rules of evidence—Tentative admission—Exclusion—Discontinuance—Objections. When objection is made to the admissibility of evidence, such evidence may be received subject to a later ruling. The officer conducting the hearing may, in his discretion, either with or without objection, exclude inadmissible evidence or order cumulative evidence discontinued. Parties objecting to the introduction of evidence shall state the precise grounds of such objection at the time such evidence is offered.

[Recodified as § 363-11-530. 97-08-042, filed 3/28/97, effective 3/28/97; Rule .08.530, effective 3/1/60, filed 3/23/60.]

WAC 363-11-540 Petitions for rule making, amendment or repeal—Who may petition. Any interested person may petition the board of pilotage commissioners requesting the promulgation, amendment, or repeal of any rule.

[Recodified as § 363-11-540. 97-08-042, filed 3/28/97, effective 3/28/97; Rule .08.540, effective 3/1/60, filed 3/23/60.]

WAC 363-11-550 Petitions for rule making, amendment or repeal—Requisites. Where the petition requests the promulgation of a rule, the requested or proposed rule must be set out in full. The petition must also include all the reasons for the requested rule together with briefs of any applicable law. Where the petition requests the amendment or repeal of a rule presently in effect, the rule or portion of the rule in question must be set out as well as a suggested amended form, if any. The petition must include all reasons for the requested amendment or repeal of the rule.

[Recodified as § 363-11-550. 97-08-042, filed 3/28/97, effective 3/28/97; Rule .08.550, effective 3/1/60, filed 3/23/60.]

WAC 363-11-560 Petitions for rule making, amendment or repeal—Agency must consider. All petitions shall be considered by the board of pilotage commissioners and the board may, in its discretion, order a hearing for the further consideration and discussion of the requested promulgation, amendment, repeal, or modification of any rule.

[Recodified as § 363-11-560. 97-08-042, filed 3/28/97, effective 3/28/97; Rule .08.560, effective 3/1/60, filed 3/23/60.]

WAC 363-11-570 Petitions for rule making, amendment or repeal—Notice of disposition. The board of pilotage commissioners shall notify the petitioning party within a reasonable time of the disposition, if any, of the petition.

[Recodified as § 363-11-570. 97-08-042, filed 3/28/97, effective 3/28/97; Rule .08.570, effective 3/1/60, filed 3/23/60.]

WAC 363-11-580 Declaratory rulings. As prescribed by RCW 34.04.080, any interested person may petition the board of pilotage commissioners for a declaratory ruling. The board shall consider the petition and within a reasonable time the board shall:

- (1) Issue a nonbinding declaratory ruling; or
- (2) Notify the person that no declaratory ruling is to be issued or
- (3) Set a reasonable time and place for a hearing or the submission of written evidence upon the matter, and give reasonable notification to the person of the time and place for such hearing or submission and of the issues involved.

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(4) If a hearing is held or evidence is submitted as provided in subsection (3), the board shall within a reasonable time:

- (a) Issue a binding declaratory rule; or
- (b) Issue a nonbinding declaratory ruling; or
- (c) Notify the person that no declaratory ruling is to be issued.

[Recodified as § 363-11-580. 97-08-042, filed 3/28/97, effective 3/28/97; Rule .08.580, effective 3/1/60, filed 3/23/60.]

WAC 363-11-590 Forms. (1) Any interested person petitioning the board of pilotage commissioners for a declaratory ruling pursuant to RCW 34.04.080, shall generally adhere to the following form for such purpose.

(a) At the top of the page shall appear the wording "Before the board of pilotage commissioners, state of Washington," on the left side of the page below the foregoing the following caption shall be set out: "In the matter of the petition of (name of petitioning party) for a declaratory ruling." Opposite the foregoing caption shall appear the word "petition."

(b) The body of the petition shall be set out in numbered paragraphs. The first paragraph shall state the name and address of the petitioning party. The second paragraph shall state all rules or statutes that may be brought into issue by the petition. Succeeding paragraphs shall set out the state of facts relied upon in form similar to that applicable to complaints in civil actions before the superior courts of this state. The concluding paragraphs shall contain the prayer of the petitioner. The petition shall be subscribed and verified in the manner prescribed for verification of complaints in the superior courts of this state.

(c) The original and two legible copies shall be filed with the agency. Petitions shall be on white paper, either 8 1/2" x 11" or 8 1/2" x 13" in size.

(2) Any interested person petitioning the board of pilotage commissioners requesting the promulgation, amendment or repeal of any rules shall generally adhere to the following form for such purpose.

(a) At the top of the page shall appear the wording "Before the board of pilotage commissioners, state of Washington." On the left side of the page below the foregoing the following caption shall be set out: "In the matter of the petition of (name of petitioning party) for (state whether promulgation, amendment or repeal) of rule (or rules)." Opposite the foregoing caption shall appear the word "petition."

(b) The body of the petition shall be set out in numbered paragraphs. The first paragraph shall state the name and address of the petitioning party and whether petitioner seeks the promulgation of new rule or rules, or amendment or repeal of existing rule or rules. The second paragraph, in case of a proposed new rule or amendment of an existing rule, shall set forth the desired rule in its entirety. Where the petition is for amendment, the new matter shall be underscored and the matter proposed to be deleted shall appear in double parentheses. Where the petition is for repeal of an existing rule, such shall be stated and the rule proposed to be repealed shall either be set forth in full or shall be referred to by agency rule number. The third paragraph shall set forth concisely the reasons for the proposal of the petitioner and shall contain a statement as to the interest of the petitioner in the

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subject matter of the rule. Additional numbered paragraphs may be used to give full explanation of petitioner's reason for the action sought.

(c) Petitions shall be dated and signed by the person or entity named in the first paragraph or by his attorney. The original and two legible copies of the petition shall be filed with the agency. Petitions shall be on white paper, either 8 1/2" x 11" or 8 1/2" x 13" in size.

[Recodified as § 363-11-590. 97-08-042, filed 3/28/97, effective 3/28/97; Rule .08.590, effective 3/1/60, filed 3/23/60.]